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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

HARDY CONSTRUCTION CO., a
Montana Corporation,

Plaintiff,

vs.

CONTINENTAL WESTERN
INSURANCE COMPANY,

Defendant.

NO. _____

NOTICE OF REMOVAL

(Montana Thirteenth Judicial
District Court, Yellowstone County,
Cause No. DV 14-1415)

Clerk's Action Required

TO: The Judges and Clerk of the United States District Court in and for
The District of Montana, Billings Division;

AND TO: Plaintiff Hardy Construction Company;

AND TO: W. Anderson Forsythe, Michele L. Braukmann, and Moulton
Bellingham PC, its attorneys

Defendant Continental Western Insurance Company ("CWIC") hereby
gives notice that this action is removed to the United States District Court in and

NOTICE OF REMOVAL -
No. _____

727412.1/102314 1414/99980177

- 1 -

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for the District of Montana, Billings Division from the Montana Thirteenth Judicial District Court, Yellowstone County. Pursuant to 28 U.S.C. § 1441, CWIC further states as follows:

1. **Intradistrict Assignment:** This matter is being removed to the United States District Court in and for The District of Montana, Billings Division because, per plaintiff's Complaint, the claims arose in Yellowstone County, Montana. Plaintiff's Complaint was filed in the Montana Thirteenth Judicial District Court, Yellowstone County.

2. **State Court Action:** CWIC is a defendant in a civil action filed in the Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DV 14-1415 (the "State Court Action").

3. **Commencement of State Court Action:** The State Court Action was commenced when plaintiff's Summons and Complaint were filed with the clerk of the Montana Thirteenth Judicial District Court, Yellowstone County, on or about October 2, 2014. Service of the Summons and Complaint was effected on CWIC on or about October 3, 2014. This Notice of Removal is timely, in that it is being filed within twenty-one (21) days of service of the Complaint upon CWIC. CWIC has not filed any pleadings in the State Court Action to date.

4. **Record in State Court:** The following pleadings constitute all of the process, pleadings and orders received by CWIC in this action up to the present time:

- **Commissioner of Securities & Insurance letter of service;**
- **Summons;**
- **Complaint and Jury Demand.**

NOTICE OF REMOVAL -
No. _____

727412.1/102314 1414/99980177

- 2 -

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A true and correct copy of the Complaint is attached hereto as Exhibit A.

5. Diversity of Citizenship is Basis for Federal Court Jurisdiction:

This dispute between plaintiff and CWIC is a controversy between citizens of different states.

a. Plaintiff Hardy Construction Co. is incorporated under the laws of the State of Montana and at all times material hereto conducted business and maintained its principal places of business in Yellowstone County, Montana.

b. CWIC is, and at all material times has been, incorporated under the laws of Iowa, with its principal place of business in Des Moines County, Iowa.

Complete diversity exists between plaintiff and CWIC.

6. Nature and Description of Case: The above-entitled action is a civil action seeking compensatory and punitive damages for breach of contract and tortious conduct.

7. Amount in Controversy: The amount in controversy is not expressly set forth in plaintiff's Complaint. However, CWIC believes and therefore alleges that the monetary value relief plaintiff seeks in this action exceeds \$75,000, for the following reasons. The present action relates to an underlying action for damages against the plaintiff Hardy Construction Co. The underlying action is styled *Southern Lights, L.P. v. Hardy Construction Co., et al.*, and is pending in the Montana 13th Judicial District Court, Yellowstone County, Cause No. DV-13-1290. In *Southern Lights v. Hardy Construction*, the plaintiff Southern Lights seeks in excess of \$2 million in damages from the

NOTICE OF REMOVAL -
No. _____

727412.1/102314 1414/99980177

defendants, including Hardy Construction. Hardy Construction, the plaintiff in this case, seeks damages for defense and indemnification costs related to *Southern Lights v. Hardy Construction*, as well as other compensatory and punitive damages. *See* Complaint, ¶ 10. In addition, plaintiff Hardy Construction seeks an award of attorneys' fees and costs incurred in this action.

Taking all these factors into consideration, CWIC reasonably believes plaintiff Hardy Construction seeks damages and other recoveries counting toward the jurisdictional minimum, aggregating in excess of \$75,000.

8. **Applicable Statutes:** This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the action is removable pursuant to 28 U.S.C. § 1441(b).

9. **Concurrent Notice to State Court:** CWIC is concurrently filing a copy of this Notice of Removal with the Clerk of the Montana Thirteenth Judicial District Court, Yellowstone County, pursuant to 28 U.S.C. § 1446(d).

DATED this 23rd day of October, 2014.

BETTS, PATTERSON & MINES, P.S.

By /s/ Joseph D. Hampton
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Attorneys for Defendant Continental
Western Insurance Company

NOTICE OF REMOVAL -

No. _____
727412.1/102314 1414/99980177

- 4 -

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CERTIFICATE OF SERVICE

I, Joseph D. Hampton, hereby certify that on October 23, 2014, I electronically filed the following:

- **Notice of Removal;**
- **Certificate of Service;**

with the Court using the CM/ECF system which will send notification of such filing to the following:

Counsel for Plaintiff Hardy Constr.:

W. Anderson Forsythe
Michele L. Braukmann
Moulton Bellingham PC
Suite 1900, Crowne Plaza
P.O. Box 2559
Billings, MT 59103-2559
andy.forsythe@moultonbellingham.com
michele.braukmann@moultonbellingham.com

Dated this 23rd day of October, 2014.

BETTS, PATTERSON & MINES, P.S.

By /s/ Joseph D. Hampton
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Attorneys for Defendant Continental
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727412.1/102314 1414/99980177

- 5 -

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